

CERTIFICATE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 341.

FREDERICH HOENINGHAUS AND HENRY W. CURTISS,
APPELLANTS,

vs.

THE UNITED STATES.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SECOND CIRCUIT.

FILED JULY 2, 1898.

(16,926.)

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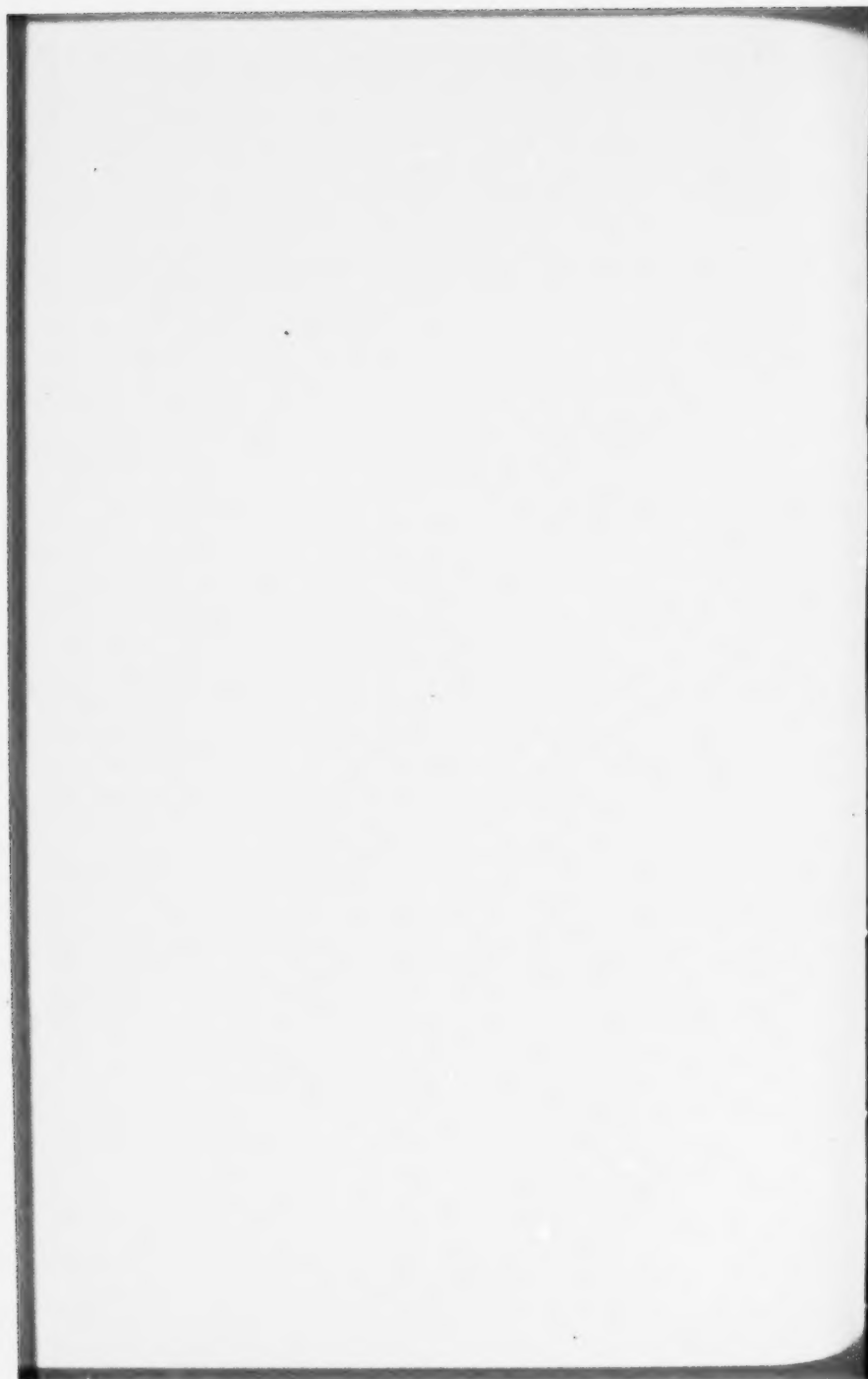
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1 United States Circuit Court of Appeals for the Second Circuit.

FREDERICH HOENINGHAUS and HENRY W. CURTISS,	} Suit No. 2702.
Appellants,	
vs.	
THE UNITED STATES, Appellee.	

Certificate for Instructions.

To the Supreme Court of the United States :

A judgment or decree of the circuit court of the United States for the southern district of New York having been made and entered on the 7th day of April, 1898, by which it was ordered, adjudged, and decreed that there was error in the decision of the board of general appraisers in this cause, and that said decision be, and the same is hereby, in all things affirmed, and an appeal having been taken from said judgment or decree to this court by the above-named appellants, Frederick Hoeninghaus and Henry W. Curtiss, composing the firm of Hoeninghaus & Curtiss, and the cause having been placed upon the calendar of this court and reached for argument, and the record therein having been printed and filed, from which it appears that certain questions of law therein are involved, concerning which this court desires the instruction of the Supreme Court of the

2 United States, the following facts, from which the said questions arise, are herewith submitted and certified as follows :

First. Certain merchandise, consisting of woven fabrics in the piece, composed of silk and cotton, was imported from a foreign country into the port of New York by the appellants per S. S. La Gascogne, and entered for consumption on September 15th, 1897. The merchandise was returned by the appraiser as manufactures of silk and cotton in the gum, silk under 20 per cent., and was classified and assessed for duty by the collector of customs at said port at the rate of 50 cents per pound, under paragraph 387, Schedule L, of the tariff act of July 24th, 1897, which reads as follows :

"Woven fabrics in the piece, not specially provided for in this act, weighing not less than one and one-third ounces per square yard and not more than eight ounces per square yard, and containing not more than twenty per centum in weight of silk, if in the gum, fifty cents per pound, and if dyed in the piece, sixty cents per pound ; if containing more than twenty per centum and not more than thirty per centum in weight of silk, if in the gum, sixty-five cents per pound, and if dyed in the piece, eighty cents per pound ; if containing more than thirty per centum and not more than forty-five per centum in weight of silk, if in the gum, ninety cents per pound, and if dyed in the piece, one dollar and ten cents per pound ; if dyed in the thread or yarn and containing not more than thirty per centum in weight of silk, if black (except selvages), seventy-five cents per pound, and if other than black, ninety cents per pound ; if containing more than thirty and not more than forty-five per centum in

weight of silk, if black (except selvages), one dollar and ten cents per pound, and if other than black, one dollar and thirty cents per pound; if containing more than forty-five per centum in weight of silk,

3 or if composed wholly of silk, if dyed in the thread or yarn and weighted in the dyeing so as to exceed the original weight of the raw silk, if black (except selvages), one dollar and fifty cents per pound, and if other than black, two dollars and twenty-five cents per pound; if dyed in the thread or yarn, and the weight is not increased by dyeing beyond the original weight of the raw silk, three dollars per pound; if in the gum, two dollars and fifty cents per pound; if boiled off, or dyed in the piece, or printed, three dollars per pound; if weighing less than one and one-third ounces and more than one-third of an ounce per square yard, if in the gum, or if dyed in the thread or yarn, two and one-half dollars per pound; if weighing less than one and one-third ounces and more than one-third of an ounce per square yard, if boiled off, three dollars per pound; if dyed or printed in the piece, three dollars and twenty-five cents per pound; if weighing not more than one-third of an ounce per square yard, four dollars and fifty cents per pound; but in no case shall any of the foregoing fabrics in this paragraph pay a less rate of duty than fifty per centum ad valorem."

Second. On the last item of the invoice the appraiser made an addition of fcs. .09 per meter to make market value, making the appraised value exceed the value thereof declared in the entry.

Third. The merchandise had been entered at the invoice value, and in the liquidation of the entry on November 8th, 1897, the collector of the port levied an additional duty of 1 per centum of the total appraised value for each 1 per centum that said appraised value exceeded the value declared on said item in the entry, under the provisions of section 32 of the act of July 24th, 1897, which reads as follows:

4 "That sections seven and eleven of the act entitled 'An act to simplify the laws in relation to the collection of the revenues,' approved June tenth, eighteen hundred and ninety, be, and the same are hereby, amended so as to read as follows:

SEC. 7. That the owner, consignee, or agent of any imported merchandise which has been actually purchased may, at the time when he shall make and verify his written entry of such merchandise, but not afterwards, make such addition in the entry to the cost or value given in the invoice or *pro forma* invoice or statement in form of an invoice, which he shall produce with his entry, as in his opinion may raise the same to the actual market value or wholesale price of such merchandise at the time of exportation to the United States, in the principal markets of the country from which the same has been imported; but no such addition shall be made upon entry to the invoice value of any imported merchandise obtained otherwise than by actual purchase; and the collector within whose district any merchandise may be imported or entered, whether the same has been actually purchased or procured otherwise than by purchase, shall cause the actual market value or wholesale price of such merchandise to be appraised; and if the

appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value declared in the entry, there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of one per centum of the total appraised value thereof for each one per centum that such appraised value exceeds the value declared in the entry, but the additional duties shall only apply to the particular

5 article or articles in each invoice that are so undervalued, and shall be limited to fifty per centum of the appraised value of such article or articles. Such additional duties shall not be construed to be penal, and shall not be remitted, nor payment thereof in any way avoided, except in cases arising from a manifest clerical error, nor shall they be refunded in case of exportation of the merchandise, or on any other account, nor shall they be subject to the benefit of drawback: Provided, that if the appraised value of any merchandise shall exceed the value declared in the entry by more than fifty per centum, except when arising from a manifest clerical error, such entry shall be held to be presumptively fraudulent, and the collector of customs shall seize such merchandise and proceed as in case of forfeiture for violation of the customs laws, and in any legal proceeding that may result from such seizure, the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same and forfeiture shall be adjudged unless he shall rebut such presumption of fraudulent intent by sufficient evidence. The forfeiture provided for in this section shall apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles in each invoice which are undervalued: Provided, further, that all additional duties, penalties or forfeitures applicable to merchandise entered by a duly certified invoice, shall be alike applicable to merchandise entered by a *pro forma* invoice or statement in the form of an invoice, and no forfeiture or disability of any kind, incurred under the provisions of this section shall be remitted or mitigated by the Secretary of the Treasury. The duty shall not, however, be

6 assessed in any case upon an amount less than the invoice or entered value."

Fourth. On November 18th, 1897, the following protest was filed by the appellants, importers, at the custom-house, at New York:

NEW YORK, *November 18th, 1898.*

Hon. George R. Bidwell, collector of customs, New York.

SIR: We hereby protest against your decision, liquidation, and assessment of duties as made by you on our importations below mentioned, consisting of certain merchandise contained in the cases or packages marked and numbered as described on the entries and invoices thereof; to which, for more certainty of description, reference is hereby had, claiming that as said merchandise, having regard either to its invoice, entered or appraised value, was not subject

to an ad valorem duty or to a duty based upon or in any manner regulated by the value thereof, but, on the contrary, *were* subject to specific duties, you had no right to levy any additional duty thereon under section 7 of the act of June 10th, 1890, as amended section 32 of the act of July 24th, 1897, and not at — as charged by you; and we give notice that we pay all other higher rates than is claimed above as the legal rate under compulsion and to obtain possession of our goods. We claim that the duty exacted by you is not the legal duty to which said goods are chargeable, holding you and the Government responsible for all excess of duty exacted by you upon said goods above the legal duty.

Vessel.	From—	Date of entry.	Entry No.	If wareh'ee, W. H. bond.	Date of liq'd'n.	Marks and numbers of packages.
Gascogne.....	Havre	1897. Sept. 15	148,047	C.....	1897. Nov. 8	A. S. 298 and others, as per invoices and entries.

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HOENINGHAUS & CURTISS,
CURIE & SMITH,
Attorneys, # 33 and 46 Exchange Place, N. Y.

Fifth. The board of United States general appraisers, under the provisions of section 14 of the customs administrative act of June 10th, 1890, affirmed the decision of the collector, and held that said goods were properly subject to the additional duty imposed under section 7 of the customs administrative act of June 10th, 1890, as amended by section 32 of the tariff act of July 24th, 1897. The decision was made by a majority of the board of three general appraisers, one general appraiser dissenting.

Sixth. From this decision of the board of United States general appraisers the importers, appellants, appealed to the circuit court of the United States for the southern district of New York by petition praying for a review of said decision pursuant to section 15 of said act of June 10th, 1890, and the said circuit court upon said petition ordered the board of United States general appraisers to return to the circuit court the record and the evidence taken by them, together with a certified statement of the facts involved in the case, and their decision thereon, and the said board of general appraisers thereafter made such return in response to said order of the court.

Seventh. The case thereafter came on to be tried upon the record returned by the board of general appraisers before Hon. William K. Townsend, district judge, holding the said circuit court, who after hearing argument directed the entry of judgment affirming the decision of the board of general appraisers; which judgment was entered on the 7th day of April, 1898, from which judgment
8 the present appeal was taken by the appellants, Frederich Hoeninghaus and Henry W. Curtiss, to this court. Upon these facts this court for the proper decision of said cause desires instruction upon the questions of law following—that is to say:

First. Under the provisions of par. 387 of the act of July 24, 1897, and sec. 7 of the act of June 10, 1890, as amended by sec. 32 of the act of July 24, 1897, was the merchandise in suit subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof?

Second. Did the additional duty of one per centum of the total appraised value of said merchandise for each one per centum that such appraised value exceeded the value declared in the entry, as applied to the particular article in said invoice undervalued, as aforesaid, accrue according to the provisions of section 7 of the act of June 10, 1890, as amended by section 32 of the act of July 24, 1897?

And to that end this court hereby certifies such questions to the Supreme Court of the United States.

WM. J. WALLACE,
Circuit Judge.
E. HENRY LACOMBE,
Circuit Judge.
N. SHIPMAN,
Circuit Judge.

9 UNITED STATES OF AMERICA, }
Second Circuit, } ss:

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing certificate in the case entitled Hoeninghaus & Curtis against The United States was duly filed and entered of record in my office by order of said court on the 24th day of June, 1898, and, as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said United States circuit court of appeals for the second circuit, at the city of New York, in the southern district of New York, in the State of New York, this 28th day of June, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-second.

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

10 [Endorsed:] # 2702. U. S. circuit court of appeals for the second circuit. Frederick Hoeninghaus and Henry W. Curtis, appellants, vs. The United States, appellee. Certificate for instructions. Curie & Smith, att'ys for appellants. # 46 Exchange

place, N. Y. city. United States circuit court of appeals, second circuit. Filed Jun- 24, 1898. William Parkin, clerk.

11 [Endorsed :] United States circuit court of appeals, second circuit. Hoeninghaus & Curtis *vs.* The United States. Certificate for instructions.

Endorsed on cover: Case No. 16,926. U. S. C. C. of appeals, 2nd circuit. Term No, 341. Frederich Hoeninghaus and Henry W. Curtiss, appellants, *vs.* The United States. (Certificate.) Filed July 2nd, 1898.